

Introduction

After a review of the evidence in this case, a refined issues list was issued as final by the Board on November 1, 2011. As party to the settlement discussions and eventual partial agreement proposal to the Board, we had accepted the company's evidence on most of the issues. Upon Board acceptance of the partial agreement on December 1, 2011, there were seven outstanding issues. The following are the submissions of the Federation of Rental-housing Providers of Ontario (FRPO) on the outstanding issues in the Enbridge Gas Distribution (EGD) application for 2012 rates.

Issue 9: Is the amount proposed for Gas Cost & Carrying Cost appropriate?

**1. In our submission, EGD has not discharged its onus to prove that its gas costs for 2012 are appropriate as the company did not abide by the System Reliability Settlement Agreement approved by the Board in 2010<sup>1</sup>.**

2. The issue of System Reliability was originally brought forth by the company in 2008.<sup>2</sup> The Board decision in that case ordered an interim solution and a Long Term Resolution of System Reliability process including a specific direction:

*"The Board agrees with parties that Enbridge's efforts at stakeholder consultation were insufficient in this case. For the hearing of the long term resolution, the Board expects evidence of stakeholder consultation to be brought forward in the form of a thoughtful application which identifies the impacts of the resolution on direct shippers, their customers and other stakeholders."*<sup>3</sup>

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<sup>1</sup> EB-2010-0231 Decision dated August 26, 2010.

<sup>2</sup> EB-2008-0219 EGD 2009 Rates Application

<sup>3</sup> EB-2008-0219 Decision dated July 14, 2009

3. The resulting consultation that lasted almost one full year was successful in developing a Long Term Resolution of System Reliability that was contained in a Settlement Agreement proposal submitted to the Board by EGD.<sup>4</sup> In approving the proposed Settlement Agreement, the Board provided these specific comments:

*The Board has reviewed the Settlement Agreement and considered the rationale underlying the Settlement Agreement and has found it to be adequate. The Board also finds that the quality and detail of the supporting evidence is sufficient to allow the Board to make findings on all of the matters of concern. The Board accepts the Settlement Agreement in its entirety and finds that it is in the public interest. Lastly, the Board commends Enbridge on the thoroughness of its consultative process which led to unanimous acceptance of the actions to improve system reliability. Enbridge should proceed to implement the provisions of the Settlement Agreement as soon as possible for the upcoming 2010/2011 winter season.*

4. In our submission, the term Long Term as applied to the Resolution for System Reliability constituted an expectation of more than one winter. Further in the agreement, the parties expressly recognized that, over time, changing circumstances could bring about the need to adapt the Agreement to meet the System Reliability needs in a changing market:

*In the event of a change in circumstances that affects security of supply to Enbridge's franchise area and/or the Long Term Resolution in any material way ("Material Change"), Enbridge will review the implications of the change and, within a reasonable period of time after the change has become known, will report to the parties to this Settlement Agreement regarding the implications of the change on*

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<sup>4</sup> EB-2010-0231 Settlement Agreement Proposal dated July 19, 2009.

*system reliability and/or the Long Term Resolution. For this purpose, a Material Change will include, but not be limited to, the following:*

- *construction of new facilities that increase the availability of short haul firm transportation service to Enbridge's franchise area*
- *a material change in the availability of TCPL discretionary services*
- *the conclusion from any future Board process that addresses matters relevant to Enbridge's system reliability*

5. In the evidence in this proceeding, EGD documented continued concerns about the reliability of its peaking service contracts arising from events of January and February of 2011<sup>5</sup>:

*"During January 2011 and February 2011 when curtailment was called by Enbridge those concerns became a reality. Certain Direct Purchase customers had their MDV deliveries cut by their suppliers as well as cuts with respect to CDS nominations. In addition, the Company did not receive deliveries as a result of one of the peaking suppliers having their supplies cut. This has led the Company to lower the amount of traditional peaking supplies that it will plan to acquire in 2012. To compensate for this reduction the Company has included an additional 75,000 Gj/day of TCPL STFT for three winter months."*

6. EGD's evidence states that their response to the issues with lack of reliability was to increase the amount of Short-term Firm Transport (STFT) contracted for with TransCanada Pipelines Ltd. (TCPL). In spite of other reasons presented by the company in cross-examination<sup>6</sup>, in our respectful submission, this choice of STFT over peaking service simply equates to an increase of 37.5% in the Firming of Peaking Service

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<sup>5</sup> Exhibit B, Tab 4, Schedule 1, paragraph 11.

<sup>6</sup> Transcript Volume 1 , pages 24-39.

Component of Long Term Resolution for System Reliability.<sup>7</sup> This increase in the predominance of firm transport over peaking service in the EGD portfolio can be seen clearly by the fact that the EGD assessment was an incremental 50,000 GJ's were needed to meet their peak day and EGD chose to contract for 75,000 GJ's of incremental STFT.<sup>8</sup> This step was also taken without notice to the Board or intervenors prior to contracting.<sup>9</sup> In our view, EGD did not fulfill its obligations in this Board approved Settlement Agreement in the Long Term Resolution for System Reliability.

7. From the information that formed the record about System Reliability in the original EB-2008-0219 and the subsequent EB-2010-0231, it is clear that the process of securing reliability is a risk management exercise that comes down to choices of how much reliability is warranted and at what cost. The result of the initial proceeding was the Board's decision that the amount of reliability and resulting cost should be informed by input from stakeholders who would be impacted by the final choice. The resulting Settlement Agreement demonstrated a balancing of interests to achieve a solution acceptable to all parties.
  
8. The choice by EGD to fulfill its incremental peak day need for 2012 with STFT at a higher cost than peaking service, without consultation in spite of the Settlement Agreement, reveals a disregard for the input of customers impacted by their choice. This

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<sup>7</sup> EB-2010-0231 Exhibit C, Tab 1, Schedule 1, Appendix A

<sup>8</sup> Transcript Volume 1, pages 24-25

<sup>9</sup> Transcript Volume 1, pages 24-26

incremental cost was quantified by EGD as \$7.8 million<sup>10</sup>. While EGD states in the analysis contained in the undertaking that "the next block of supplies were a lot more costly"<sup>11</sup>, they also responded in cross examination that, after they had accepted the original peaking service bids, the company did not go back out to the market to test the price again prior to securing the STFT.<sup>12</sup> Further, the undertaking analysis was done comparing 75,000 GJ's of peaking service when, in fact, the peak day need was 50,000 GJ<sup>13</sup>. Therefore an argument could be made that the incremental cost of 75,000 GJ of STFT was more than \$7.8 million more than 50,000 GJ of peaking service would have been.

9. We have had the opportunity to review Board staff submissions and while helpful, we would respectfully disagree with their view that the changes were not material<sup>14</sup> as this increase in STFT was almost 40% above the agreed to value of 200,000 GJ and cost \$7.8 million.
  
10. In our respectful submission, it could be argued that the actions of EGD in securing this increment of STFT without notification to the Board or intervenors was imprudent and the costs ought to be disallowed. However, we can accept that this could come down to an interpretation of material change. In recognition of the views of Board staff and in trying to advance the public interest, FRPO would recommend that the Board directs

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<sup>10</sup> Exhibit J1.1

<sup>11</sup> Transcript, page 55

<sup>12</sup> Transcript, page 85, line 24 to page 86, line 5

<sup>13</sup> Transcript, page 24, lines 20-23

<sup>14</sup> Board Staff Submissions dated February 14, 2012, page 4.

Enbridge to provide sufficient evidentiary record in the re-basing application along with the annual consultations as outlined in Board staff submissions.<sup>15</sup>

Issue 11: Is the nature of, and the amount proposed for, the Z factor – 2012 Cross Bores / Sewer Laterals appropriate?

Issue 14. Is it appropriate to establish for 2012 the proposed Cross Bores Cost Variance Account (“CBCVA”)?

11. Enbridge has been performing the Sewer Safety/Cross Bore mitigation program since 2009<sup>16</sup> although its knowledge of the issue dates back to 2004. In 2004, EGD judged that the issue was primarily an American problem.<sup>17</sup> More recent information has proven that original judgement to be false but the company did not provide its original qualitative assessment of its earliest knowledge of the risk in 2004 that determined the issue to be not relevant.<sup>18</sup>

*MR. QUINN: But the tool of -- on a matrix to come up with the expected frequency and the potential consequence and mapping that out to find the highest risk threats, that itself as a generic practice is not a new practice; would you agree with that?*

*MS. LAWLER: No, it's not new.*

*MR. QUINN: Thank you. If I take you back in terms of your opening examination-in-chief, you described the incident that -- in your affiliate's franchise. Was this type of risk analysis done in 2004 by Enbridge or Enbridge Inc. to look at that situation?*

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<sup>15</sup> Board Staff Submissions dated February 14, 2012, page 5.

<sup>16</sup> Exhibit B, Tab 2, Schedule 6, Page 6

<sup>17</sup> Transcript Volume 2, page 90

<sup>18</sup> Transcript Volume 2, page 116

*MS. LAWLER: Not to my knowledge. If it was, I would say it is cursory, and, again -- so low frequency, high consequence. We didn't believe -- we believed that the frequency was so infrequent in our franchise area that it was not a relevant risk to us.*

12. What is clear from the evidence and testimony of EGD witnesses is their understanding of the risks occurring as unintended consequences of a cost saving construction technique is continuing to evolve.<sup>19</sup> As such, the evidence also shows that the amount of effort and cost to analyze the risk and implement mitigation practices has increased over the last few years.<sup>20</sup>

13. We respectfully submit that the developing practices of EGD are clearly an evolution of prudent utility plant damage risk management and not an event eligible for Z factor funding. The second Z factor criteria is<sup>21</sup>:

*"the cost must be beyond the control of the Company's management and is not a risk in respect of which a prudent utility would take risk mitigation steps"*

We would respectfully submit that the risk mitigation of plant damage and its potentially lethal consequences is a practice that utilities have performed for decades. The evolving practices related to this new area of risk for plant damage are the risk management steps of a prudent utility and therefore are disqualified by the criteria.

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<sup>19</sup> Transcript Volume 2, page 112, lines 9 to line 22

<sup>20</sup> Exhibit J2.3

<sup>21</sup> EB-2007-0615 Exhibit N1, Tab 1, Schedule 1, Page 21

14. Management's choice of the ongoing prudent nature of this program was further illustrated in the frank responses of the witness panel in discussing the irrelevance of the TSSA order relative to the choices that they would make.<sup>22</sup>

15. This recognition of prudence was accepted by EGD and it seems all parties as captured in the EGD argument-in-chief:<sup>23</sup>

*"There appears to be no dispute that Enbridge's Sewer Safety Program is an appropriate and prudent response to identified risks related to cross bores."*

Where we do have a dispute with EGD is their "interpretative licence" with this definition as captured later in the argument-in-chief<sup>24</sup>:

*The second part of this Z factor criterion was established to ensure that the utility cannot claim a cost increase as a Z factor when that cost increase could have been avoided if the utility's past actions had been prudent.*

The reference used for this definition was their own interrogatory response.<sup>25</sup> Now had EGD referenced a Board decision that was rendered using this altered definition then the weight of precedent would be on their side. However, in our respectful submission EGD is adding words to the definition that changes the criteria and this definition was not agreed to by the parties in the original Settlement Agreement which captured the criteria.<sup>26</sup>

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<sup>22</sup> Transcript Volume 2, page 126, line 21 to page 127, line 17

<sup>23</sup> EGD Argument-in-chief, page 14, paragraph 22.

<sup>24</sup> EGD Argument-in-chief, page 20, paragraph 66 b)

<sup>25</sup> As explained in response to Energy Probe Interrogatory #6: Ex. 1-5-6, and at 2 Tr. 103-104

<sup>26</sup> EB-2007-0615 Settlement Agreement

16. In summary, we would respectfully conclude, for the reasons contained above, that the Cross Bore Safety program does not qualify for Z factor treatment and therefore no variance account would be required for 2012. We would expect to see EGD include these costs in the next re-basing case and would view them favourably as ongoing prudence.

Issue 10: Is the nature of, and the amount proposed for, the Z factor – 2012 Pension Funding Requirement appropriate?

Issue 13: Is it appropriate to establish for 2012 the proposed Pension Funding Costs Variance Account (“PFCVA”)?

17. We have reviewed the submissions of the School Energy Coalition (SEC) and we support these submissions in their entirety.

Issue 15: Is it appropriate to establish for 2012 the proposed Transition Impact of Accounting Changes Deferral Account (“TIACDA”)?

18. No submissions.

Issue 17: Is the proposed cost allocation of the two new Z factors appropriate?

19. While we have not supported the creation of Z factor accounts, to the extent that the Board decides to allow additional Z factors, we have no issue with the cost allocation proposed.

Costs

20. We respectfully submit that the Federation of Rental-housing Providers of Ontario has acted responsibly in its intervention in this matter and respectfully requests that it be awarded 100% of its reasonably incurred costs in connection with this matter.

All of which is respectfully submitted on behalf of FRPO,



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Dwayne R. Quinn

Principal

DR QUINN & ASSOCIATES LTD